

### **REMARKS**

Upon entry of this amendment, Claims 1, 12, 14-21 and 23 will be pending in the application.

Claim 1 is being amended without prejudice or disclaimer to define a more particular embodiment of the invention. No new matter is being added.

#### **Rejection Alleging Obviousness-Type Double Patenting**

Claims 1, 12, 14-21 and 23 are provisionally rejected for alleged obviousness-type double patenting over claims 1-10 and 12 of copending Application No. 10/477,900. The Examiner alleges that the claims are not patentably distinct from each other because the '900 application teaches compounds of formula (I) (citing claims 1-9 and 12), and the present application teaches a method of use claim containing the instant compounds and compositions of the patent application, making the present method claims an obvious variation of the copending application. The Examiner further posits that claim 10 of the copending application (a method of treatment of bacterial infections) broadly encompasses the present application's method of treatment of bacterial infections caused by *S. aureus*, *E. faecalis*, *M. cattarrhalis* or *S. pneumoniae*.

Preliminarily, Applicants note that the present application claims are directed to methods of treatment (claims 1, 14-21) and to pharmaceutical compositions (claim 12 and 23). The '900 application claims are directed to compounds (claims 1-9 and 14), a method of treatment of bacterial infections (claim 10 and 15), a pharmaceutical composition (claim 12) and a process for preparing compounds (claim 13).

The present claims have been amended to define a particular embodiment of the invention, more particularly in regard to the group R<sup>4</sup> and specifically R<sup>5</sup>. Applicants respectfully submit that the '900 application claims do not teach or suggest such a group R<sup>4</sup>.

In particular, in present claim 1 R<sup>4</sup> is a group -CH<sub>2</sub>-R<sup>5</sup> in which R<sup>5</sup> is selected from: (C<sub>3-12</sub>)alkyl; hydroxy (C<sub>3-12</sub>)alkyl; (C<sub>1-12</sub>)alkoxy(C<sub>3-12</sub>)alkyl; (C<sub>1-12</sub>)alkanoyloxy(C<sub>3-12</sub>)alkyl; (C<sub>3-6</sub>)cycloalkyl(C<sub>3-12</sub>)alkyl; hydroxy -, (C<sub>1-12</sub>)alkoxy- or (C<sub>1-12</sub>)alkanoyloxy-(C<sub>3-6</sub>)cycloalkyl(C<sub>3-12</sub>)alkyl; cyano(C<sub>3-12</sub>)alkyl; (C<sub>2-12</sub>)alkenyl; (C<sub>2-12</sub>)alkynyl; tetrahydrofuryl; mono- or di-(C<sub>1-12</sub>)alkylamino(C<sub>3-</sub>

$1_2$ alkyl; acylamino( $C_{3-12}$ )alkyl; ( $C_{1-12}$ )alkyl- or acyl-aminocarbonyl( $C_{3-12}$ )alkyl; mono- or di- ( $C_{1-12}$ )alkylamino(hydroxy) ( $C_{3-12}$ )alkyl; optionally substituted phenyl( $C_{1-2}$ )alkyl, phenoxy( $C_{1-2}$ )alkyl or phenyl(hydroxy)( $C_{1-2}$ )alkyl; optionally substituted diphenyl( $C_{1-2}$ )alkyl; optionally substituted phenyl( $C_{2-3}$ )alkenyl; optionally substituted benzoyl or benzoylmethyl; optionally substituted heteroaryl( $C_2$ )alkyl; and optionally substituted heteroaroylmethyl.

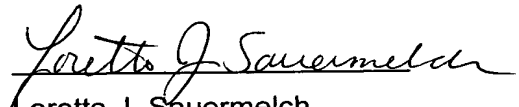
In the '900 application claim 1,  $R^4$  is a group  $-U-V-R^5$  where  $R^5$  is an optionally substituted bicyclic carbocyclic or heterocyclic ring system (A), containing up to four heteroatoms in each ring in which at least one of the rings (a) or (b) is aromatic, and wherein the rings are further defined as set forth in the claim. In one embodiment set forth in claim 1, U is CO, SO<sub>2</sub> or CH<sub>2</sub> and V is CR<sup>17</sup>R<sup>18</sup>. In another embodiment set forth in claim 1, U is CH<sub>2</sub> and V is CO, SO<sub>2</sub> or CR<sup>17</sup>R<sup>18</sup>. The '900 claims do not teach or suggest a group  $R^4$  as set forth in the present claims. Accordingly, the present claims are patentably distinct from the '900 application claims. Withdrawal of the rejection is respectfully requested.

**Conclusion**

In view of the above comments, Applicants believe that the present claims are in condition for allowance and earnestly solicit the same.

Should the Examiner have any questions or otherwise wish to discuss any aspect of this case, the Examiner is encouraged to contact the undersigned attorney at the number listed below.

Respectfully submitted,



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